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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

ELIZABETH MARY VARGEM,

Defendant and Appellant.

C086874

(Super. Ct. No. 17FE019218)

While intoxicated, defendant Elizabeth Mary Vargem ran a stop sign and collided with another vehicle, injuring the other driver. She pled no contest to multiple driving under the influence offenses, admitted an on-bail enhancement, and admitted that she had two prior convictions for driving under the influence within 10 years of the current offenses. The court sentenced defendant to the midterm of three years in state prison.

On appeal, defendant contends the trial court improperly imposed several probation conditions, which are unauthorized given her commitment to prison. The People concede, and we agree, the court lacked authority to impose conditions of

probation after sentencing her to state prison. We shall strike the challenged conditions and affirm the judgment as modified.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant has a long history of driving while intoxicated. In October 2017, while out on bail in another matter, defendant drove at a high rate of speed and ran a stop sign. She collided with another vehicle, causing the victim's car to roll over several times; the victim was injured in the collision. Two hours after the accident, defendant's blood-alcohol content was 0.259.

Defendant was charged with driving under the influence of alcohol causing injury to another, and driving with a blood-alcohol level of 0.08 or above causing injury. It was further alleged that she committed the charged offenses while released on bail, and that within the past 10 years she had two prior driving under the influence convictions.

In February 2018, defendant pled no contest to both counts and admitted the enhancement allegations. The trial court rejected the probation department's recommendation to grant defendant probation, and instead sentenced defendant to the midterm of three years on count one, and stayed the midterm of two years on count two under Penal Code section 654.

DISCUSSION

Defendant challenges seven probation conditions the trial court imposed after sentencing her to prison, claiming the conditions are unauthorized. The People agree. Although defendant did not object to the conditions below, a claim that a sentence is unauthorized may be raised for the first time on appeal. (*People v. Dotson* (1997) 16 Cal.4th 547, 554, fn. 6.) We therefore consider defendant's contentions on the merits.

The presentence probation report urged the court to grant defendant probation and listed 25 conditions for the court to impose. Although the court rejected the recommendation to grant probation, and instead sentenced defendant to state prison for a determinate three-year term, the court nevertheless imposed many of the recommended

probation conditions. These conditions included: (9) defendant not drive a vehicle with any measurable amount of alcohol in her blood; (10) defendant abstain from the consumption of any alcoholic beverage knowingly in any amount whatsoever and shall not knowingly possess alcohol nor be in places where she knows alcohol is the chief item of sale; (17) defendant install and maintain for three years, pursuant to section 23575 of the Vehicle Code, an ignition interlock device within 30 days of sentencing or release from custody, whichever occurs first, in each motor vehicle she owns and operates, except as provided by section 23248 of the Vehicle Code; (19) defendant not commit any criminal offense; (20) defendant have no contact whatsoever with the victim without prior approval of the probation officer; and (23)/(24) defendant serve a period of incarceration and participate in and successfully complete an 18-month alcohol program.

Generally, once a trial court commits an adult defendant to the California Department of Corrections and Rehabilitation to serve a state prison sentence, the court's supervisory power over conditions of probation and rehabilitation ceases. (*Cano v. Superior Court* (1999) 72 Cal.App.4th 1310, 1314.) Thus, the responsibility and discretion over terms and conditions of a felon's release are vested in the Board of Parole Hearings, which has authority over parole. (Pen. Code, §§ 3053, subd. (a), 5075, & 5077.)

While a trial court may issue a no-contact order when a defendant is sentenced to prison, it may do so only under limited circumstances. These include: during the duration of criminal proceedings, for domestic violence offenses, in some sex offense cases where the defendant is granted probation, and where the defendant is convicted of a sexual offense involving a minor victim. A no-contact order may also be warranted if the defendant threatened a witness in the case or tried unlawfully to interfere with the criminal proceedings. (*People v. Robertson* (2012) 208 Cal.App.4th 965, 996.)

Here, it is undisputed that the court sentenced defendant to prison rather than probation. The trial court thus exceeded the scope of its sentencing authority when it

determined the terms of defendant's postcommitment parole; such matters come within the Board of Parole Hearings' jurisdiction. We shall therefore strike conditions 9, 10, 17, 19, 23, and 24. (*People v. Sanders* (2012) 55 Cal.4th 731, 743, fn. 13 ["[T]he appellate court can correct a legal error resulting in an unauthorized sentence . . . at any time".])

We shall also strike the no-contact order in condition 20. None of the circumstances warranting a no-contact order against a defendant committed to state prison exists here. Although the no-contact order may have been enforceable as a condition of probation had the court granted defendant probation, because it sentenced her to state prison, the condition is not justified. Accordingly, we agree with the parties that the no-contact order is unauthorized and must be stricken. (*People v. Robertson*, *supra*, 208 Cal.App.4th at p. 996.)

DISPOSITION

Conditions 9, 10, 17, 19, 20, 23, and 24 orally imposed during sentencing are stricken. The judgment is affirmed in all other respects.

/s/

Robie, J.

We concur:

/s/

Hull, Acting P. J.

/s/

Mauro, J.